

reasonableness of the cable operator's charges for installation or rental of equipment used for the receipt of cable programming service. The franchise authority may file a complaint with the Commission only upon receipt of more than one subscriber complaint made to the franchise authority within 90 days after the effective date of the challenged rate increase.

(b) The Commission shall not review any complaint with respect to cable programming services filed after March 31, 1999.

12. Section 76.951 is amended to read as follows:

§ 76.951 Standard complaint form; other filing requirements

(a) Any complaint regarding a cable operator's rate for cable programming service or associated equipment must be filed using standard complaint form, FCC 329.

(b) The following information must be provided on the standard complaint form:

(1) The name, mailing address and phone number of the franchising authority that is filing the complaint;

(2) The name, mailing address, and FCC community unit identifier of the relevant cable operator;

(3) A description of the cable programming service or associated equipment involved and, if applicable, how the service or associated equipment has changed;

(4) The current rate for the cable programming service or associated equipment at issue and, if the complainant is challenging the reasonableness of a rate increase, the most recent rate for the service or associated equipment immediately prior to the rate increase;

(5) If the complainant is filing a corrected complaint, an indication of the date the complainant filed the prior complaint and the date the complainant received notification from the Commission that the prior complaint was defective;

(6) A certification that a copy of the complaint, including all attachments, is being served contemporaneously via certified mail on the cable operator;

(7) An indication that the complainant franchising authority received more than one subscriber complaint within 90 days of the operator's imposition of the rate in question; and

(8) A certification that, to the best of the complainant's knowledge, the information provided on the form is true and correct.

13. Section 76.953 is amended by deleting the remaining portion of that section following "only in the event of a rate change."

14. Section 76.956 is amended by deleting the parenthetical text in the last sentence of § 76.956(a).

15. Section 76.964 is amended by revising paragraphs (a), (b) and (c) to read as follows:

Sec. 76.964 Written notification of changes in rates and services.

\* \* \* \* \*

(a) In addition to the requirement of Section 76.309(c)(3)(i)(B) regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notices to subscribers shall inform them of their right to file complaints about changes in cable programming service tier rates and services, shall state that the subscriber may file the complaint within 90 days of the effective date of the rate change, and shall provide the address and phone number of the local franchising authority.

(b) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable means at its sole discretion.

(c) Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

\* \* \*

16. Section 76.984 is amended by revising paragraph (c) to read as follows:

Sec. 76.984 Geographically uniform rate structure.

\* \* \* \* \*

(c) This section does not apply to:

(1) A cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or

(2) Any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable

system shall have the burden of showing that its discounted price is not predatory.

17. A new Section 76.1004 is added to subpart O to read as follows:

Sec. 76.1004 Applicability of program access rules to common carriers and affiliates.

Any provision that applies to a cable operator under sections 76.1000 through 76.1003 shall also apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this section, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).

18. A new subpart R is added to read as follows:

Subpart R - Telecommunications Act implementation

§ 76.1400 Purpose

§ 76.1401 Effective competition and local exchange carriers.

§ 76.1402 CPST rate complaints.

§ 76.1403 Small cable operators.

§ 76.1404 Use of cable facilities by local exchange carriers.

Subpart R - Telecommunications Act implementation

§ 76.1400 Purpose

The rules and regulations set forth in this subpart provide interim procedures for administering certain aspects of cable regulation. These rules and regulations provide guidance for operators, subscribers and franchise authorities with respect to matters that are subject to immediate implementation under governing statutes but require specific regulatory procedures or definitions. The rules set forth in this subpart are interim because the Commission has solicited comment regarding the specific matters addressed in these rules and may modify their operation when they are promulgated in final form.

§ 76.1401 Effective competition and local exchange carriers.

(a) As used in Section 76.905(b)(4), the term "comparable" programming means access to at least 12 channels of programming, at least some of which are local television broadcasting signals.

(b) As used in Section 76.905(b)(4), the term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person. For purposes of the section, the term "own" means to own an

equity interest (or the equivalent thereof) of more than 10 percent.

(c) An operator meeting the relevant criteria under Section 76.905(b)(4), may, at any time, file a petition for a determination of effective competition with the Commission. The petition should set forth information supporting a determination that effective competition exists as defined in 76.905(d)(4).

(d) Upon filing of a petition described in paragraph (d) of this section with the Commission, the operator filing the petition shall provide a copy of the petition to the local franchise authority. The Commission will issue a public notice of the petition's filing to allow interested parties to respond. The Commission may then issue an order granting or denying the petition. The Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

#### § 76.1402 CPST rate complaints

(a) A local franchise authority may file rate complaints with the Commission within 180 days of the effective date of a rate increase on the cable operator's cable programming services tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.

(b) Before filing a rate complaint with the Commission, the local franchise authority must first give the cable operator written notice, including a draft FCC Form 329, of the local franchise authority's intent to file the complaint. The local franchise authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase or, where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the Commission the complaint and the operator's response to the Complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be filed with the local franchise authority without filing specific FCC Forms.

#### § 76.1403 Small cable operators

(a) Effective February 8, 1996, a small cable operator is exempt from rate regulation on its cable programming services tier, or on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(b) A small cable operator is an operator who, directly or through an affiliate, serves in the aggregate fewer than 617,000 subscribers in the United States and whose annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.

(c) As used in this section, an operator shall be deemed affiliated with another entity if that

entity holds a 20 percent or greater equity interest, passive or active, in the operator or exercises de jure or de facto control over the operator.

(d) Procedures

(1) If a small cable operator has only a single tier that is subject to regulation, the operator, at any time, may certify in writing to its local franchise authority that it meets all criteria necessary to qualify as a small operator. Upon request of the local franchising authority, the operator shall identify in writing all of its affiliates that provide cable service, the total subscriber base of itself and each affiliate, and the aggregate gross revenues of its cable and non-cable affiliates. Within 90 days of receiving the original certification, the local franchising authority shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the operator to respond to a proper request for information by the local franchising authority. If the local franchising authority finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may appeal the local franchising authority's decision to the Commission within 30 days.

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds unless and until the local franchising authority has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it claimed to be deregulated, plus interest, in the event the operator is later found not to be deregulated. The one-year limitation on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(3) Within 30 days of being served with a local franchising authority's notice that the local franchising authority intends to file a cable programming services tier rate complaint, an operator may certify to the local franchising authority that it meets the criteria for qualification as a small cable operator. This certification shall be filed in accordance with the cable programming services rate complaint procedure set forth in Section 76.1402. Absent a cable programming services rate complaint, the operator need not file for small cable operator certification in order to treat its cable programming services tier as deregulated.

(4) If a pending CPST rate complaint was filed with the Commission before the effective date of these interim rules, the operator should file its certification of small cable operator status directly with the Commission within 15 days of the effective date of these interim rules.

§ 76.1404 Use of cable facilities by local exchange carriers.

For purposes of Section 76.505(d)(2), the Commission will determine whether use of a cable

operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the following procedures:

(a) Within 10 days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with Section 76.7.

(b) Based on the record before it, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

## **APPENDIX B**

### **FCC FORM 329 CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM INSTRUCTIONS**

The Federal Communications Commission (FCC) investigates the reasonableness of rates for cable programming services tier(s) based on the complaint filed by a local franchise authority. By filing this form, the local franchise authority begins an investigation into the relevant cable system's rates for cable programming services, related equipment or installation. Therefore, the local franchise authority's participation is critical to the enforcement of the FCC's cable rate regulations.

#### **Who May File This Form?**

Only a local franchise authority may file a rate complaint with the FCC against a cable system serving the franchise authority's community. A local franchise authority may file this form with the Commission only if it has received subscriber rate complaints, in accordance with the Commission's rules, within 90 days of the effective date of a rate increase by the cable system. A local franchise authority that files this form with the Commission must do so within 180 days of the effective date of the rate increase. The decision whether to file this form is left to the discretion of the local franchise authority. In no event is a local franchise authority required to file this form, or to challenge in any way an increase in cable rates, even if it receives timely subscriber complaints.

This form must be signed by a government official with authority to act on behalf of the franchise authority.

#### **How does the complaint process work?**

There are a series of steps which must be taken by the local franchise authority prior to filing a rate complaint with the Commission. These steps are as follows:

- 1) Within 90 days of an increase in rates for cable programming services (or associated equipment or installation), the local franchise authority receives subscriber complaints, in accordance with the Commission's rules, concerning the increase.
- 2) The local franchise authority makes the initial determination that:
  - a) the increase took effect no more than 90 days before the subscriber complaints were received;
  - b) the increase pertains to the cable programming services tier(s).
- 3) Once the local franchise authority determines that the subscribers' rate complaints meets these standards and further decides to challenge the rate increase, the local franchise authority shall send written notice, including a draft FCC Form 329 to the

cable system by certified mail, to inform the cable system operator that a complaint is pending. The local franchise authority must give the operator a minimum of 30 days to file a response with the local franchise authority.

4) The cable system operator must file its complete response with the local franchise authority within the time period specified by the franchising authority. The cable system operator's response must consist of either relevant FCC Forms used to justify a rate increase or, where appropriate, a certification that the cable system is not subject to rate regulation.

5) The local franchise authority has 180 days from the effective date of the rate increase to file the FCC Form 329, together with the cable operator's response, with the Commission. If the cable system operator fails to file the appropriate rate justifications, and fails to evidence that its rates are not subject to regulation, the local franchise authority shall certify such failure and shall submit the FCC Form 329 absent this information.

6) Upon the issuance of a final order by the FCC, the FCC shall provide both the local franchise authority and the cable system with a copy of its decision.



**FCC FORM 329**  
**CABLE PROGRAMMING SERVICES RATE COMPLAINT FORM**  
**PLEASE READ THE INSTRUCTIONS PRIOR TO COMPLETING THIS FORM**

All of the requested information must be provided to enable us to consider the complaint. Incomplete filings cannot be processed and will be returned.

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Franchise Authority Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Phone Number: \_\_\_\_\_

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Cable System Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Phone Number: \_\_\_\_\_

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FCC community unit identifier number for cable system.      \_ \_ \_ \_ \_

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Subscriber complaints regarding a rate increase  
to the cable programming services tier(s) were      YES      NO  
received by the local franchise authority  
within 90 days of the effective date of the increase.  
(If no, the complaint cannot be filed.)

Specify in detail the cable programming services tier being complained about:

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The complaints referred to indicate the following increase(s):

Current rate: \$ \_\_\_\_\_ Prior rate: \$ \_\_\_\_\_  
Effective date of increase: \_\_\_\_\_ (month, day, year)

Were any channels added to or dropped from  
the cable programming services tier      YES      NO  
concurrent with the increase in the rate?

Indicate the number of channels added: \_\_\_\_\_

Indicate the number of channels dropped: \_\_\_\_\_

**PAGE 2 - FCC FORM 329**

**CERTIFICATIONS:**

**By signing this form the local franchise authority certifies to the FCC that, to the best of its knowledge and belief, the following is true and correct:**

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- 1) The local franchise authority has received subscriber complaints in accordance with the Commission's rules regarding a rate increase to the cable programming services tier(s) provided by the cable system within 90 days of the date of the increase first appearing on the subscriber's cable bill.
- 2) Consistent with the requirements of this form, the cable system was provided a draft copy of this form by certified mail and given a minimum of 30 days from that date to give the local franchise authority a rate justification on the appropriate FCC Form or, alternatively, a certification that it is not subject to rate regulation.
- 3) Consistent with the requirements of this form, this information provided by the cable system is attached to and made a part of this filing by the local franchise authority. If no such attachments are filed with this form, the franchise authority certifies that the cable system operator failed to file the appropriate information with the local franchise authority within the specified time period, and requests that the FCC act upon the information as submitted.
- 4) In the event additional information relevant to the filing of this FCC Form 329 is obtained by the local franchise authority prior to the Commission taking final action thereon, the local franchise authority will immediately notify the Commission of such additional information and provide the same to the Commission.
- 5) The local franchise authority has filed this complaint with the Commission within 180 days of the date the rate increase became effective.

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**Name**

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**Signature**

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**Date**

The Commission has obtained Office of Management and Budget (OMB) approval, under the emergency processing provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13), of the information contained in this form. Approval is effective no later than the date that the summary for the Order and Notice of Proposed Rulemaking (CS Docket 96-85, FCC 96-154) appears in the Federal Register. Emergency OMB approval for the information collections expires June 30, 1996.

**Separate Statement  
of  
Commissioner James H. Quello**

**Re: Implementation of Cable Reform Provisions of the  
Telecommunications Act of 1996, CS Docket No. 96-85**

This item goes a long way toward implementing, in as straightforward a manner as possible, the cable-related provisions of the Telecommunications Act of 1996: adopting rules where possible, seeking comment where necessary, and adopting interim rules in the meantime. Thus, I generally support adoption of this Order and Notice of Proposed Rule Making.

With one exception. I fail to understand why there is any need to seek comment on how we should permanently implement one of the more important and straightforward provisions of the 1996 Act: the new fourth prong of the effective competition test. This prong provides that effective competition exists if a LEC or its affiliate "offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator...."

Perhaps as important as what this provision says is what it does not say: this prong does not include, as do the other three prongs, a pass and/or penetration test. Did Congress omit a number intentionally, so that the Commission would find effective competition whenever a LEC offers service in the franchise area, regardless of the extent of such offering? I believe so. This interpretation of the Act is consistent with both the explicit language of Section 301(b)(3), and with the underpinnings of the 1996 Act, which eliminates rate regulation on the cable programming services tier in three years, and in many other respects minimizes the regulatory burden on cable operators.

Thus, I would have felt entirely comfortable adopting the straightforward language of the Act without seeking further comment in an NPRM. However, while this was my preferred approach, I voted for this item confident that the record will ultimately support my reading of the 1996 Act, and that the Commission will act expeditiously to adopt final rules in this very important proceeding. We should strive to promptly provide certainty to the cable industry on the matters contained in the NPRM portion of this item in order to end the roller coaster ride of regulation that cable operators have had to endure since passage of the 1992 Cable Act.

SEPARATE STATEMENT OF  
COMMISSIONER RACHELLE B. CHONG

Re: *Implementation of Cable Reform Provisions in the Telecommunications Act of 1996:*  
*CS Docket No. 96-85, Order and Notice of Proposed Rulemaking*

In this item, we implement certain sections of the Telecommunications Act of 1996 ("1996 Act") pertaining to reform of cable television regulation. It is my view that most of these statutory sections are clear, self-effectuating provisions which require only conforming rule changes. We determined, however, that a few of the sections require further rulemaking in order to be fully and clearly implemented. Although I agree with most of the determinations to seek additional comment, I write separately to express my concern about one such determination. Specifically, I do not believe that we need to seek comment on the portion of Section 301(l)(1) of the 1996 Act that provides that effective competition exists if a local exchange carrier ("LEC") offers video programming services "in the franchise area" of a cable operator.

Prior to the enactment of the 1996 Act, Section 623(l)(1) of the Communications Act of 1934, as amended, found that effective competition existed if any one of the following three tests were met:

(A) fewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system;

(B) the franchise area is --

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15% of the households in the franchise area; or

(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in the franchise area.<sup>1</sup>

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<sup>1</sup> 47 U.S.C. §623(l)(1).

Section 301(b)(3) of the 1996 Act added a fourth effective competition test to Section 623(l)(1). The new test provides that effective competition exists when a:

local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

Unlike the other three "effective competition" tests, this fourth test does *not* include a percentage penetration or pass rate. Nevertheless, in our Notice, we ask how much of the franchise area must be served by the LEC to constitute effective competition. In adopting an effective competition test without a specific pass or penetration rate, Congress made its intention clear that this fourth effective competition test would be met if the LEC offered service in any portion of the franchise area. If Congress had intended a higher standard, I believe that it would have specified a pass or penetration rate as it did in the other three effective competition tests. Accordingly, I do not believe that we need to ask for comment on this issue.

I am further troubled by the notion, expressed several times in the effective competition section of the item, that it is the Commission's role to determine when competition provided by a LEC reaches a "sufficient" level that will have "a restraining effect on cable rates."<sup>2</sup> In my view, Congress made that determination when it adopted each of the four effective competition tests. The Commission's role is to determine whether those tests established by Congress have been met – not to independently evaluate whether the level of competition is "sufficient" to have "a restraining effect on cable rates." Only in cases where there is some ambiguity in the statutory language, should the Commission look to the underlying purpose of the statute for guidance in determining how to interpret the statute.<sup>3</sup> I do not believe this situation is one of those cases.

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<sup>2</sup> See *Order & Notice* ¶¶ 7, 17 and 72.

<sup>3</sup> *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).